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OFFICE OF PETITIONS

In re Application of :
Luntz and Rose : DECISION ON PETITION
Application No. 10/728,832 :
Filed: December 8, 2003 :
Attorney Docket No. 27056.2640 :

This is in response to the petition under 37 CFR 1.47(a), filed June 9, 2004. Applicants obtained a one-month extension of time to reply. Accordingly, the petition is filed timely.

The petition is dismissed.

Applicants are given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on December 8, 2003, with a declaration without all of the inventors' signatures. Accordingly, on March 9, 2004, the Office mailed a "Notice to File Missing Parts of Nonprovisional Application," requiring the signatures of Matt Luntz. Additionally, the Notice to File Missing Parts indicated that a new oath or declaration was required, which identified the residence and citizenship of each inventor.

In response, on June 9, 2004, applicants filed the present petition, a request for a one-month extension of time to reply, and an authorization to charge any additional fees.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicants lack item (2) as set forth above.

As to item (2), applicants failed to submit an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64. The declaration does not identify Mr. Luntz's residence, mailing address or country of citizenship. The Office notes that the oath or declaration must identify the country of citizenship, as well as "[t]he mailing address, and the residence if an inventor lives at a location which is different from where the inventor customarily receives mail, of each inventor. . . ." 37 CFR 1.63(c)(1). Accordingly, to correct the deficiencies, applicants must submit an oath or declaration in compliance with 37 CFR 1.63 and 1.67, which identifies the entire inventive entity, the correct mailing address and citizenship of each inventor, and is signed by Mr. Rose on behalf of the nonsigning inventor, Mr. Luntz.

The \$130.00 petition fee will be charged to Deposit Account No. 50-2036, as authorized. The Office finance records indicate that applicants paid a two-month extension of time fee. The \$310.00 fee is not necessary and will be refunded to applicants' Deposit Account.

Further correspondence with respect to this matter should be addressed as follows and to the attention of Christina Tartera Donnell, Senior Petitions Attorney:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
 220 20th Street S.
 Customer Window, Mail Stop Petition
 Crystal Plaza Two, Lobby, Room 1B03
 Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions